

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RICK SUTLEY,

Plaintiff,

v.

INTERNATIONAL PAPER COMPANY,

Defendant.

Civil Action No. 07-105 Erie

MEMORANDUM ORDER

Plaintiff, Rick Sutley's, Employee Retirement Income Security Act ("ERISA") complaint was received by the Clerk of Court on May 9, 2007, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 27], filed on February 27, 2009, recommended that the motion for summary judgment filed by Defendant [Doc. No. 12] be denied, and that the motion for summary judgment filed by the Plaintiff [Doc. No. 15] be granted in part and denied in part, but that the matter be remanded to the Plan Administrator for further proceedings. The parties were allowed ten (10) days from the date of service to file objections. Plaintiff filed objections and a brief in support of his objections on March 9, 2009 [Doc. No. 28 and Doc. No. 29]; no objections were filed by Defendant. After de novo review of the documents in the case, together with the Report and Recommendation and Plaintiff's objections thereto, the following order is entered:

AND NOW, this 16th day of March, 2009;

IT IS HEREBY ORDERED that the Defendant's Motion for Summary Judgment [Doc. No. 12] is DENIED; Plaintiff's Motion for Summary Judgment [Doc. No. 15] is GRANTED in part and DENIED in part; the case is hereby REMANDED to the Plan Administrator for further proceedings.

The Report and Recommendation [Doc. No. 27] of Magistrate Judge Baxter, filed

on February 27, 2009, is adopted as the opinion of the Court.¹

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge

¹The Court does not adopt, however, the Magistrate Judge's characterization at page 14 of the Report and Recommendation of the application of the Pinto/Post "heightened arbitrary and capricious standard" in Hession v. Prudential Insurance Co. v. North America, 2008 WL 5207089 (3rd Cir. 2008), as "inexplicable."